IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.792 of 2007

Sulochana .. Petitioner

Vs

1. State rep. by its
   Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The District Collector and
   District Magistrate
   Cuddalore District
   Cuddalore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.Gandhikumar
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the mother of the detenu viz., Arul Jothy @ Jothy, son of Paramasivam, who was incarcerated by order dated 8.5.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, and confined at Central Prison, Cuddalore, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention in C1/D.0/19/2007, to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

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2. The order of detention dated 8.5.2007 was passed on the basis of the ground case in Crime No.103 of 2007 for alleged commission of offences under Sections 294, 324, 332, 506(ii) and 307 of I.P.C. The allegation against the detenu was that on 26.4.2007 at about 19.15 hours, when the Sub Inspector of Police, Vridhachalam Police Station, was engaged in regulation of traffic at Vridhachalam Palakkarai junction, the detenu, shouting that their organisation members were unnecessarily tortured by the police, that he would destroy the state properties and police party by using country bombs and that he had no confidence over the Government, veiled out a veecharuval from his backside of shirt and held it aloft and caused terror and panic in the minds of general public on the road. On seeing such violent activities, the surrounding people got panic and scattered into all directions. The police personnel tried to apprehend the detenu, but he threatened them at the knife point by saying that he belongs to Tamizhar Liberation Army and he would kill them. When the Sub Inspector went to close to him, the detenu with intention to cause his death, forcibly cut him with veecharuval and caused bleeding injury on his left hand. The police personnel arrested the detenu and remanded to judicial custody.

3. The second respondent, taking note of the above case as a ground case and finding that there are three adverse cases pending against the detenu in Crime Nos.603/2001, 137/2005 and 298/2005 on the file of Vridhachalam Police station and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 8.5.2007 on the main ground that even though in the grounds of detention, it is mentioned that the detenu with intention to cause the death of the Sub Inspector of Police, cut him with his veecharuval and caused bleeding injury on his hand, no supporting material viz., the wound certificate relating to the injuries sustained by the Sub Inspector of Police has been furnished to the detenu. According to the learned counsel, in view of the non supply of the essential document viz., wound certificate, the detenu was not in a position to make an effective representation and hence the order of detention vitiates. In support of his contention, the learned counsel for the petitioner relied upon the decision of the Apex Court in POWNAMMAL v. STATE OF TAMIL NADU AND ANOTHER [A.I.R. 1999 SC 618].

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5. In POWNAMMAL v. STATE OF TAMIL NADU, cited supra, where the Tamil version of the remand order, which is a relied upon document was not supplied to the detenu even though it was demanded by the detenu, the Apex Court held thus -

> " 15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detenue could

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not understand English language. Admittedly, Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenue."

6. In view of the decision of the Apex Court cited supra, we find some force in the argument of the learned counsel for the petitioner that the detenu was prejudiced by non-supply of the wound certificate of the injured, as he had been deprived of his opportunity to make an effective representation and hence, the impugned order of detention vitiates.

7. In the result, the habeas corpus petition is allowed and the order of detention is set aside. The detenu Aruljothy @ Jothy is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Collector and
   District Magistrate
   Cuddalore District
   Cuddalore.

3. The Superintendent
   Central Prison, Cuddalore.

4. The Joint Secretary to Government,
   Public [Law and order]
   Fort St. George, Chennai 9.

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5. The Public Prosecutor
   High Court, Madras.

+ 1 CC To Mr. K.Gandhi Kumar, Advocate SR NO.58403

HCP No.792 of 2007

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